GPN-J.332-ARCHB-8.94-1310500-ALA4 Spl-H.C.A.S.C.D.79e

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6338 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. G.J. Sabnis for Petitioner.
Mr. C.R. Sonawane, A.G.P. for Respondent Nos. 1 and 2.

None for Respondent No. 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 02, 2005

P.C.

. The Petitioners herein are in service of Respondent No. 3 college affiliated to Respondent No. 4 University. The Petitioner No. 1 is in service since 1996 and Petitioner Nos. 2 and 3 since 1998. In terms of the affidavit filed on behalf of Respondent No. 3 it is set out that these were regular posts and clear vacancies. The college had issued advertisement for the regular appointment and in response to the advertisement

Petitioner No. 1 had applied for the post of Lecturer in History in the year 1996. The Selection Committee as required in terms of the Statutes of the University could not be constituted as nominees from the University and Director of Education were not made available. It is in these circumstances that the Petitioner No. 1 was appointed on purely temporary basis by local selection committee. It is also set out that similarly Petitioner Nos. 2 and 3 applied for the post of Lecturer History and English respectively pursuant to the advertisement against regular vacancies. Their regular selection could not be done in the year 1998 till the year 2001 as the selection committee could not be constituted in terms of the University Statute as the nominees of the University and Director of Education were not made available. It is specifically set out that from the year 1996 to January, 2001 the nominees from the University and Director of Education were not made available. It is only in the year 2001 that the committee in terms of the university statutes was constituted and all the three petitioners were regularly selected. Their appointments were approved by the

University.

. Respondent Nos. 1 and 2 however, have chosen not to approve the appointments. The contention is two folds. It is firstly set out that the Petitioner did not have NET/SLET qualification and secondly it is set out that the petitioners were recruited after the ban was imposed by the State Government in the matter of recruitment in the year 2000. It is on this count, it is set out that the appointments of Petitioners cannot be approved. The Respondent also directed the College from Jan. 2001 to pay to the Petitioners on clock hour basis and not regular scale to which they were entitled for the post. The fact remains that from 1996 and 1998 onwards the Petitioners were regularly paid the scale of the post. That has not been controverted by any of the Respondents.

. As Respondent No. 1 and 2 have not granted approval to the appointment of the Petitioners, the Petitioner have sought a relief from this court by way of mandamus or direction to direct the Respondent No. 2 to approve the appointment of the

Petitioners to the post of Lecturers to which they have been regularly selected and that they may be entitled to consequential benefits including regular salary of the post.

. The petition has been opposed on behalf of the Respondent Nos. 1 and 2. Mr. Vasant Jadhav, the Administrative Officer of the Joint Director of Higher Education has filed his affidavit. In that objections as earlier noted have been set out which are that the candidates for selection to the post of Lecturer in terms of the UGC and Government requirement must pass NET/SLET examinations and secondly the petitioners were appointed during the ban period. It is therefore, submitted that the appointments cannot be regularised. It may be noted and has been pointed out at the Bar that the ban on appointment was lifted thereafter some time in Nov. 2004.

. In so far as first objection namely that the petitioners not having acquired NET/SLET Examination, similar issue was in issue before this court in the matter of those who had been appointed before 1999. The Division Bench of this court in Writ

Petition No. 578 of 2002 decided on 18.4.2002 relying on the judgement of the another Division Bench of this Court at Aurangabad has taken a view that in case of those teachers who did not have NET/SLET examinations, their cases should be referred to the UGC exemption and untill such time their services should not be terminated. In the meantime and during the pendency of the petitions, UGC itself has issued a Circular dated 9.12.2004. By the virtue of that circular passing of NET/SLET examinations is exempted in cases where NET/SLET qualified/excepted candidates were not available when interviews were held following due procedures. It is further provided whenever passing of NET/SLET examination is granted in view of these circumstances, the candidate were compulsorily required to clear NET the period of two years from the date of issue of communication of exemption by UGC.

. In the instant case, we from the record we find that the Petitioner NO. 2 passed MA degree with 55% marks and she has completed M.Phil with B grade and obtained Ph.D. degree in 2001. The Petitioner No.

3 possesses M.A. decree in English with 57.42% marks and B. Ed. (English and Geography) with 64% marks and she has completed M.Phil in English entrance. The Management of the College by their letter dated 17.11.2004 has already forwarded the names of the three petitioners for exemption in terms of the UGC letter dated 2.11.2004 forwarded by the Director Board of College and Shivaji University, Kolhapur. That objection therefore, is not maintainable.

. In so far as ban on recruitment is concerned, we find that the Petitioner No. 1 was already in service in 1996 and was in service at the time when ban was issued. Similarly also is the position in so far as Petitioner Nos. 2 and 3 are concerned. All the petitioners though they were elected by the local selection committee they were paid in the regular pay scales. This is therefore, not a case of fresh selection but merely regularisation of the selection already done pursuant to advertisement. The Petitioners cannot be regularly appointed as set out in the affidavit of the Management because between 1998 to 2001 the names of the nominees of

the University and Director of Education were not forwarded for the purpose of constituting a committee in terms of statute of university. It is therefore, clear that these are not fresh selections. The Petitioners were holding office at the time when ban was imposed. It cannot be therefore, said that the petitioners have been selected after the ban was imposed. The objection therefore, raised by the Respondent Nos. 1 and 2 to regularisation of Petitioner on that count must also be rejected.

. The only other issue is consequential benefits which the petitioner would be entitled to. If the petitioners were drawing regular salary from 1996 and 1998 respectively and thereafter it was not open to the Respondents to direct the management from Jan. 2001 to pay to the Petitioners only on clock hour basis. Unless there is any statutory rule or GR which so permitted. As we have already pointed out the petitioners were in service and they were paid regular salary. It was not open therefore, to the respondents to direct the management to pay to the petitioner salary on clock hour basis. Considering the

above, we find that the only objections raised by the Respondent Nos. 1 and 2 are not sustainable and therefore, failure to grant of approval to the regular appointment of the petitioners is clearly arbitrary and to that extent the petition will have to be allowed. We however, make it clear that as the names of the petitioners have been forwarded to the UGC for exemption, their regularisation will be subject to the order to be passed by the UGC.

. In the light of the above, rule made absolute in terms of Prayer Clause (b) subject to the petitioners getting exemption from UGC. There shall be no order as to costs.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)